

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Bettie Jean Green
Birtte Bratton

DEFENDANTS

Dallas County Schools

Case 3:04-cv-00891-P Document 1 Filed 04/27/04 Page 1 of 9 PageID 1

(b) County of Residence of First Dallas
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED

(c) Attorney's (Firm Name, Address, and Telephone Number)

Michael A. Josephson
Fibich, Hampton & Leebron, L.L.P.
1401 McKinney, Suite 1800
Houston, Texas 77010-9998

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- ☒ 1 Citizen of This State
- ☐ 2 Citizen of Another State
- ☐ 3 Citizen or Subject of a Foreign Country
- ☒ 1 DEF Incorporated or Principal Place of Business In This State
- ☐ 2 DEF Incorporated and Principal Place of Business In Another State
- ☐ 3 DEF Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions				

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

VIOLATIONS OF FAIR LABOR STANDARDS ACT 29 U.S.C. § 201 et seq.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

4/26/04
FOR OFFICE USE ONLY

ORIGINAL

CLERK, U.S. DISTRICT COURT
By _____
Deputy

[illegible]

Civil Action No. _____

JURY TRIAL DEMANDED

COLLECTIVE ACTION

PURSUANT TO 29 U.S.C. § 216(b)

SS

SS

- 1 -

Moreover, Defendant implemented and used an impermissible “compensation” scheme intended to keep employees from receiving all of their wages and overtime pay in accordance with the FLSA.

3. Accordingly, Plaintiffs Bettie Jean Green and Birtee Bratton bring this action on behalf of themselves and all other similarly situated current and former employees of Defendant to remedy Defendant’s unlawful conduct and to recover unpaid wages and overtime compensation under §16(b) of the FLSA. 29 U.S.C. §216(b).

II. PARTIES

4. Plaintiff Bettie Jean Green is an individual who resides in Garland, Dallas County, Texas. Green has been employed as a bus driver by Defendant within the meaning of the FLSA during the relevant three-year period. Green was unlawfully subjected to Defendant’s unlawful compensation scheme and did not properly receive all her wages, overtime compensation or benefits for all of the hours she worked, including the hours worked in excess of 40 hours per week. Green’s consent to this action is attached hereto as Exhibit A.

5. Plaintiff Birtee Bratton is an individual who resides in Dallas, Dallas County, Texas. Bratton has been employed as a bus driver by Defendant within the meaning of the FLSA during the relevant three-year period. Bratton was unlawfully subjected to Defendant’s unlawful compensation scheme and did not properly receive all her wages, overtime compensation or benefits for all of the hours she worked, including the hours worked in excess of 40 hours per week. Bratton’s consent to this action is attached hereto as Exhibit B.

6. The class of similarly situated employees or potential class members sought to be certified under 29 U.S.C. §216(b) is defined as “all current and former hourly and salaried bus drivers who were employed by DCS who were required to work off the clock and were not paid all of their wages, benefits or overtime compensation for all of the hours they worked.” The precise size and the identity of the Putative Class Members should be ascertainable from the business records, tax records, and/or employee or personnel records of Defendant, or its related and affiliated entities. The relevant time period for purposes of the collection action is April 26, 2001 to present. As described above, the Putative Class Members consist of all bus drivers who worked during the relevant time period.

7. Defendant Dallas County Schools is a intermediate educational agency which serves Dallas County’s 15 independent school districts. During the relevant time period DCS acting through its affiliates and subsidiaries, created, ratified and implemented Defendants unlawful payment scheme. Thus, DCS has acted directly or indirectly as an employer with respect to the named Plaintiff and all those similarly situated within the meaning of the FLSA. DCS can be served with process by serving its superintendent, Rick Sorrells, at the Dallas County Schools Administration Building, located at 612 N. Zang Blvd., Dallas, Texas 75208.

III. JURISDICTION

8. This Court has jurisdiction over the subject matter of this action under 29 U.S.C. § 216(b) and 28 U.S.C. §§ 1331. Plaintiffs’ claims arise under §§ 7(a)(1), and 16(b) of the FLSA. 29 U.S.C. §§ 207(a)(1), and 216(b). Additionally, this Court has

personal jurisdiction over Defendant, since Defendant maintains and has maintained sufficient contacts with the State of Texas.

**IV.
VENUE**

9. Venue is proper in the Northern District of Texas under 28 U.S.C. § 1391(a) because this is a judicial district where a substantial part of the events or omissions giving rise to the claim occurred.

**V.
COVERAGE UNDER THE FLSA**

10. At all times hereinafter mentioned, Defendant has been an employer within the meaning of the Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

11. At all times hereinafter mentioned, Defendant has been an enterprise within the meaning of Section 3(r) of the FLSA, 29 U.S.C. § 203(r).

12. At all times hereinafter mentioned, Plaintiff and all those similarly situated were individual employees as required by 29 U.S.C. §§ 206-207.

**VI.
FACTS**

13. Defendant provides transportation services to Dallas County's 15 independent school districts. At all times relevant to this action, Plaintiffs and all those similarly situated were employed by Defendant as hourly and non-exempt salaried bus drivers. During the relevant time period, the Putative Class Members were subjected to Defendant's unlawful compensation scheme and were not paid overtime for all hours worked in excess of 40 hours a week.

14. Further, upon information and belief, DCS failed to properly compensate all of its hourly and non-exempt salaried employees for all hours worked each week.

Plaintiffs contend that DCS regularly required all of its employees, including, but not limited to all hourly and non-exempt salaried bus drivers to illegally work “off the clock.” Specifically, Plaintiffs and all those similarly situated were not properly paid for extra curricular activities, field trips, athletic events, pre-trip inspections, training time, post-trip cleanup time or monitoring time. Plaintiffs’ contend that Defendant’s pattern of FLSA violations is widespread and ongoing.

15. Plaintiffs are aware of other current and former employees who are similarly situated and were not properly paid for all of the hours they worked. Accordingly, Plaintiffs and all those similarly situated contend that Defendant owes its hourly and non-exempt salaried employees unpaid wages, benefits and overtime compensation under 29 U.S.C. §207(a)(1).

VII. COLLECTIVE ACTION ALLEGATIONS

16. Other employees have been victimized by this pattern, practice and policy which are in willful violation of the FLSA. Many of these employees have worked with Plaintiffs and have reported that they were paid in the same manner as Plaintiffs and were not properly compensated for all hours worked as required by the FLSA. Thus, from discussion with these employees, Plaintiffs’ are aware that the illegal practice or policies of DCS have been imposed on the Putative Class Members.

17. The Putative Class Members are bus drivers who were not properly compensated for the performance of their job duties. Accordingly, the employees who were victimized by DCS’ unlawful compensation practices are similarly situated to Plaintiffs in terms of job duties and pay provisions.

18. DCS' failure to pay wages and overtime compensation at the rates required by the FLSA result from generally applicable policies and practices and do not depend on the personal circumstances of the Putative Class Members. Thus, Plaintiffs' experience are typical of the experience of the Putative Class Members.

19. The specific job titles or precise job requirements of the various Putative Class Members do not prevent collective treatment. All of the Putative Class Members, regardless of their precise job requirements or rates of pay, are entitled to be properly compensated for all hours worked, including those hours worked in excess of 40 hours per week. Although the issue of damages may be individual in character, there is no detraction from the common nucleus of liability facts. Accordingly the class of similarly situated plaintiffs is properly defined as:

All current and former bus drivers who worked for Dallas County Schools at any time during the time period April 26, 2001 to the present.

**VIII.
FAILURE TO PAY WAGES IN
ACCORDANCE WITH THE FAIR LABOR STANDARDS ACT**

20. During the relevant period, Defendant has violated, and is violating, the provisions of Sections 6 and/or 7 of the FLSA, 29 U.S.C. §§ 206, 207, and 215(a)(2), by employing employees in an enterprise within the meaning of the FLSA without compensating such employees for their employment in accordance with 29 U.S.C. §206(a).

21. Defendant has knowingly, willfully or in reckless disregard carried out its illegal pattern or practice of failing to pay Plaintiffs and all those similarly situated all of their wages and overtime compensation. The decision by Defendant to not pay Plaintiffs

and all those similarly situated all of their wages and overtime compensation was neither reasonable nor in good faith. Accordingly, Plaintiffs and all those who are similarly situated are entitled to their unpaid wages and overtime compensation under the FLSA, plus liquidated damages, attorney's fees and costs.

**IX.
RELIEF SOUGHT**

22. WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:
- a. For an Order pursuant to Section 16(b) of the FLSA finding Defendant liable for unpaid back wages due to Plaintiffs (and those who have joined in the suit) and for liquidated damages equal in amount to the unpaid compensation found due to Plaintiffs;
 - b. For an Order awarding Plaintiffs (and those who have joined in the suit) the costs of this action;
 - c. For an Order awarding Plaintiffs (and those who have joined in the suit) their attorneys' fees;
 - d. For an Order awarding Plaintiffs (and those who have joined in the suit) pre-judgment and post-judgment interest at the highest rates allowed by law; and
 - e. For an Order granting such other and further relief as may be necessary and appropriate.

Respectfully submitted,

By: 

Kenneth C. Fibich

State Bar No. 06952600

Michael A. Josephson

State Bar No. 24014780

FIBICH, HAMPTON & LEEBRON, L.L.P.

1401 McKinney, Suite 1800

Houston, Texas 77010

713-751-0025 (Telephone)

713-751-0030 (Facsimile)

www.fibichhampton.com

ATTORNEYS FOR PLAINTIFF